IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 918 OF 1995
IN
SPECIAL CIVIL APPLICATION NO 10679 of 1994
&
LETTERS PATENT APPEAL NO 940 OF 1995
IN
SPECIAL CIVIL APPLICATION NO 10679 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 TO 3 YES 4 & 5 NO

GUJARAT MINERAL DEVELOPMENT CORPORATION LTD
Versus
BB SINHA

Appearance: LPA NO. 918/95.
MR KM PATEL for appellant.
MR BB SINHA party-in-person.
Respondent No. 2 served.

LPA NO. 940/95.

MR BB SINHA-appellant-party-in-person.
MR KM PATEL for Res.No.1.
Respondent No.2 served.

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

Date of decision: 24/10/97

ORAL JUDGEMENT (PER : THAKKER J)

Both these appeals arise out of a common judgment and order passed by the learned Single Judge in Special Civil Application No. 10679 of 1994, decided on 5th September, 1995. That petition was filed by B.B.Sinha, appellant of Letters Patent Appeal No. 940 of 1995 for an appropriate writ, order or direction quashing and setting aside the order dated June 21, 1994, passed by the Gujarat Mineral Development Corporation Ltd. (hereinafter referred to as 'the Corporation') (Appellant of Letters Patent Appeal No. 918 of 1995), by which the services of the petitioner came to be terminated. A further prayer was made to hold Rule 27 of the Gujarat Mineral Development Corporation (Staff) Service Rules, 1969 (hereinafter referred to as "the Rules") invalid, unconstitutional and ultra-vires Article 14 of the Constitution of India. A prayer was also made directing the respondent-Corporation to treat the petitioner in continuous service and by ordering the Corporation to pay to the petitioner salary and other allowances treating him as on duty continuously from the date of termination.

It was the case of the petitioner that he was appointed as Mines Manager at Lignite Project, Panondhro, in February, 1987. He was appointed as Mines Manager in March, 1987 on probation for a period of one year. His services, however, came to be terminated in exercise of power under Rule 27 of the Rules by offering him a sum equivalent to three months' salary. The said action was challenged by the petitioner in the above petition. Various contentions were raised at the time of hearing of the petition. The learned Single Judge by his judgment and order dated September 5, 1995, partly allowed the petition. According to the learned Single Judge, the order of termination deserved to be quashed and set aside. In view of the reasons recorded and observations made in the body of the judgment, he was also of the opinion that Rule 27 of the Rules which enabled the Corporation to discharge or terminate services of a confirmed employee was unconstitutional and ultra-vires. In view of the facts and circumstances of the case, and in the light of various decisions of the Apex Court, however, the learned Single Judge did not grant reinstatement to the petitioner and passed the following order :

" The impugned order of termination would stand set aside consequent upon Rule 27 as aforesaid having been

successfully challenged in this petition. The respondent Corporation shall pay to the petitioner in lieu of reinstatement :

(a) a sum of Rs.2,83,000/- subject to the deduction as hereinafter stated :

(b) The petitioner shall be paid terminal benefits on the basis of the petitioner's conclusion of service, as on the date of this judgment and accordingly, Gratuity and Contributory Provident Fund shall be worked out and paid.

(c) Following deductions shall be made from the amount of Rs.2,83,000/- payable by way of compensation :

(i) Loan or advances, if any, taken by the petitioner.

(ii) Other legal deductions.

(iii) The amount of salary for three months stated to have been paid by way of cheque alongwith the notice of termination, if not returned or paid back by the petitioner.

(iv) Since the amount is being paid in one lump sum, it is likely that the employer may take recourse of S.192 of the Income-Tax Act, 1961, which provides that any person responsible for paying any income chargeable under the Head "Salaries", shall at the time of payment, deduct income tax on the amount payable at the average rate of income computed on the basis of the rates in force for the financial year in which payment is made on the estimated income of the assessee under this head for that financial year. If, therefore the employer proceeds to deduct income tax as provided by S. 192, it must be made abundantly clear that the petitioner would be entitled to relief under S. 89 of the Income Tax Act which provides that where by reason of any portion of assessee's salary being paid in arrears or in advance by reason of his having received in any one financial year salary for more than 12 months or a

payment which under the provisions of Cl.(3) of S. 17 is a profit in lieu of salary, his income is assessed at a higher rate than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income Tax Rules. The petitioner is entitled to relief under S. 89 because compensation herein awarded includes salary which has been in arrears as also the compensation in lieu of reinstatement and the relief should be given as provided by S.89 of the Income Tax Act read with R. 21 of the Income Tax Rules. The petitioner is indisputably entitled to the same. If any application is required to be made, the petitioner may submit the same to the competent authority and the Corporation shall, through its Tax Consultant, assist the petitioner for obtaining the relief.

(d) The respondent Corporation shall comply with the aforesaid directions within two months from today.

Rule is made absolute in the aforesaid terms. No order as to costs. "

The learned Single Judge, thus, upheld the contention of the petitioner as regards the constitutional validity of Rule 27 of the Rules. Likewise, the action of the Corporation in terminating the services of the petitioner was held to be illegal, unlawful and contrary to law and it was quashed and set aside. To that extent, reliefs were granted in favour of the petitioner. But the learned Single Judge was of the view that in the facts and circumstances of the case, reinstatement should not be granted and hence the prayer of reinstatement was refused.In lieu of reinstatement, compensation was awarded to the petitioner. The petitioner is aggrieved against that part of the judgment and he has filed Letters Patent Appeal No. 940 of 1995. Similarly, the Corporation also is aggrieved by the judgment of the learned Single Judge whereby he quashed and set aside the order of termination of services of the petitioner, declared Rule 27 of the Rules as ultra-vires

and unconstitutional and directed the Corporation to pay salary to the petitioner making incorrect calculation. Both the appeals were admitted and were ordered to be placed together for final hearing. They were called out from time to time. Mr. B.B.Sinha party-in-person (appellant of LPA No. 940 of 1995 and respondent in LPA No. 918 of 1995) and Mr. K.M.Patel, learned counsel for appellant in LPA No. 918 of 1994 and respondent in LPA No. 918 of 1995 appeared. We have heard them at considerable length.

Following points arise for our consideration :

(1) Whether the learned Single Judge has committed an error of law in declaring Rule 27 of the Gujarat Mineral Development Corporation (Staff) Services Rules, 1969, ultra-vires and unconstitutional Article 14 of the Constitution of India ?

(2) Whether the learned Single Judge has committed an error of law in quashing and setting aside order of termination of services of the petitioner ?

(3) Whether the learned Single Judge has committed an error of law in refusing reinstatement and in awarding compensation in lieu of reinstatement to the petitioner ?

(4) Whether the learned Single Judge has committed an error of law in calculating the quantum of compensation ?

RE : CONSTITUTIONAL VALIDITY :

The constitutional validity of Rule 27 of the Gujarat Mineral Development Corporation (Staff) Service Rules, 1969, was challenged by the petitioner in the petition and the challenge was upheld by the learned Single Judge. The said Rule empowers the Corporation to discharge or terminate services of an employee of Class-I and II after confirmation. Rule 27 may be quoted in extenso ; -

R.27. DISCHARGE OR TERMINATION OF SERVICE AFTER CONFIRMATION.

After confirmation, an employee in Class I and II may be relieved from the service of the Corporation for sufficient reasons by competent appointing authority or he may leave or discontinue from the service of the Corporation after giving 3 months' notice or three months' basic pay in lieu of such notice on either side. An employee in any other Class may be relieved from the service of the Corporation for sufficient reasons by the competent appointing authority or he may leave or discontinue from the service of the Corporation after giving one month's notice in writing in that behalf or by payment of one month's basic pay in lieu of such notice on either side.

Provided that the competent appointing authority may waive such notice or payment in lieu thereof. An employee of the Corporation whether temporary, on contract or permanent may be removed from service, dismissed from service or otherwise proceeded against on the grounds and in the manner provided in matters relating to conduct in the Gujarat Mineral Development Corporation Employees (Conduct) Rules and in matter relating to discipline, in the Gujarat Mineral Development Corporation Employees (Control & Appeal) Rules.

Bare reading of the Rule, makes it clear that it confers power on the Corporation to dispense with services of an employee who has been confirmed in service. The question which was raised before the learned Single Judge was whether such wide, blatent, and arbitrary power could be conferred on an employer by the Rule making authority. No doubt, Mr. Patel, learned counsel for the Corporation contended that no formal order of confirmation was passed by the Corporation in favour of the petitioner by which he was made permanent or confirmed employee. He submitted that as per settled law, an employee appointed on probation remains as such and continues as probationer till a specific and express order is passed confirming him or making him permanent. In absence of such order,he can not claim permanency. The learned Single Judge, according to the counsel,was not right in holding that the petitioner was aconfirmed employee.

In this connection, it is necessary to refer to relevant Rules of the Corporation. Rule 20 provides for confirmation of an employee . It states; " On satisfactory completion of the period of probation and extension thereof, if any, the competent appointing authority shall confirm an employee in the services of the Corporation ". Rule 20 thus indicates that an express order confirming an employee would be necessary. Rule 20, however, should be read alongwith Rule 14. That Rule reads as under :

> "The first appointment to a post shall be made on probation for a period not exceeding one year . Provided that the appointing authority may from time to time extend such period of probation as may be considered necessary, so that the total period of probation does not exceed two years ". (emphasis supplied).

In our considered opinion, a conjoint reading of Rules 20 and 14 leaves no room of doubt that an employee can be appointed initially on probation. First appointment on probation should not be for a period exceeding one year. Such period, however, can be extended at the discretion of the appointing authority from time to time as it considers necessary, provided, however, that " the total period of probation does not exceed two years". In the instant case, it is not disputed even by the Corporation that the petitioner was appointed initially in 1987. At that time, he was on probation for a period of one year. The said period was thereafter extended from time to time. On September 5, 1988, his services were terminated, but on an assurance being given, the order of termination was revoked and he was continued in service. It is only by the impugned order, that his services came to be terminated on June 21, 1994. Thus, admittedly, the petitioner had completed more than two years. Under the Rules, therefore, he could be treated as permanent and confirmed employee.

A similar question arose before the Constitution Bench of the Supreme Court in STATE OF PUNJAB VS. DHARAMSINGH, AIR 1968 SC 1210. The Apex Court was called upon to consider the effect of such provision in Service

Rules about status of a probationer. In Dharamsingh, Rule-6 of the Punjab Educational Service (provisional cadre) Class-III Rules, 1961 fell for consideration before the Court. It provided that members of service, officiating or to be promoted against permanent post shall be on probation in the first instance for one year which can be extended from time to time. Proviso to sub-rule (3), however, laid down that the total period of probation including extension, if any, should not exceed three years. Interpreting the Poviso to sub-rule (3) of Rule-6 of the Rules, their Lordships held that it was not necessary to pass an express order of confirmation when an employee has completed three years in service. If a person is appointed on probation and continued as such and complete maximum period of three years as probationer, he must be "deemed to have been confirmed" on that post.

In our opinion, the ratio laid down in Dharamsingh would apply with equal force to the facts of the instant case. Though a specific and express order of confirmation was not passed in favour of the petitioner, Rule 14 of the Rules provides for maximum period of probation and as the said period was over, as per the law laid down by the Apex Court, the petitioner could be deemed to have been confirmed. He, therefore, cannot be treated as a probationer and no action can be taken on that basis.

The matter, however, can be looked from a different angle also. It was never the case of the Corporation at the time of terminating the services of the petitioner in June, 1994 that his services were liable to be terminated as he was merely a probationer. On the contrary, the action was taken in exercise of powers under Rule 27 of the Rules. To recall , Rule 27 of the Rules applies to confirmed employees. The opening part of Rule 27 enacts that "After confirmation" , an employee may be relieved from service by the competent authority after complying with terms and conditions mentioned therein. In the instant case, by invoking Rule 27, the Corporation has taken the action. The learned Single Judge has also proceeded on that basis and in our opinion, rightly. In these circumstances, it is clear that the petitioner was treated as a confirmed employee by the Corporation and it is not open now to contend that he was a probationer and an action could be taken on that basis.

The next question in this connection is as to whether services of a confirmed employee can be

terminated by payment of three months' salary as has been done in this case. According to the petitioner, once an employee is confirmed in service or is made permanent, he can not be discontinued by passing an order of termination simpliciter. An action can be taken by way of penalty. But then, before taking penal action, a show cause notice is required to be issued, explanation must be called for and opportunity of hearing ought to be afforded. Only by complying with the principles of natural justice and fair play,a punitive action can be taken. In the instant case, that is not done and hence, the action of the Corporation is illegal and unlawful.

In this connection, attention of the learned Single Judge was invited to various decisions. We do not intend to burden our judgment by referring to all those decisions. To us, the law appears as well settled and the learned Single Judge has not committed an error of law in holding that if an employee is confirmed in service, by termination simpliciter , his services cannot be dispensed with. The latest judgment on the point referred to by the leaqrned Single Judge is in DELHI TRANSPORT CORPORATION VS. D.T.C. MAZDOOR Congress & ORS; AIR 1991 SC 101. In that case, such a provision in Regulation 9(b) of Delhi Road Transport Authority (Conditions of appointment and service) Regulations, 1952 was held to be ultra-vires and unconstitutional by a majority of 4:1. The learned Single Judge after considering the case law on the point held that such a provision could not be said to be lawful. Rule 27 of the Rules was, therefore, held to be ultra-vires and unconstitutional. We do not find any infirmity therein. In various decisions, such a provision has been described as Henry VIII Clause (vide Central Inland Water Transport Coporation VS Braja Nath Ganguly; AIR 1986 SC 1531). We, therefore, cannot uphold the contention of Mr. Patel that by declaring Rule 27 ultra-vires, illegality is committed by the learned Single Judge. The said contention has, therefore, no force and it must be negatived.

RE : ORDER OF TERMINATION

The second contention of Mr. Patel must necessarily fail in view of our finding that Rule 27 of the Rules is ultra-vires and unconstitutional. Since no provision can legally be made by the rule making authority dispensing with services of a confirmed

employee contrary to the provisions of the Constitution and the decisions of the Hon'ble Supreme Court, such action must be held to be arbitrary, unlawful and without authority of law. In our view, when the petitioner had completed maximum period of probation he must be deemed to have been confirmed as per the law declared by the Supreme Court in Dharamsingh .No action could have been taken thereafter terminating the services of the petitioner. The order, therefore, was rightly held to be illegal, unlawful and contrary to law and the learned Single Judge has not committed an error of law in setting aside such order. As the order could not have been passed in consonance with the provisions of law, it was required to be quashed and set aside. The second argument also has no substance and can not be upheld.

RE : REFUSAL TO GRANT REINSTATEMENT :

It was straneously argued by the petitioner that the learned Single Judge has committed an error in not granting reinstatement and by directing payment of compensation in lieu of reinstatement. Lengthy arguments were advanced by Mr. Sinha (party-in-person) on the one hand, and Mr. Patel, learned counsel for the Corporation on the other hand. According to Mr. Sinha, it is well settled that once the action of dismissal, discharge or termination is held to be illegal, the employee is entitled to reinstatement. According to him, reinstatement in service is the rule and payment of compensation an exception. He submitted that once the court holds that an order terminating services of an employee is contrary to law, direction should be issued to the employer to reinstate such employee with all consequential benefits. He submitted that in the instant case, the learned Single Judge has committed an error of law in relying upon certain decisions of Supreme Court and particularly on O.P.BHANDARI VS INDIAN TOURISM DEVELOPMENT CORPORATION LTD. AIR 1987 SC 111. On the other hand, Mr. Patel submitted that the learned Single Judge was right in not granting reinstatement in the facts and circumstances of the case. According to him, there are services and services and there are employees and employees. While granting discretionary relief to a successful party, a competent court is expected to consider the nature of service, powers to be exercised, functions to be performed and duties to be discharged by such employee, effect and consequences likely to ensue by granting or refusing to grant reinstatement, the effect on the management in which reinstatement is claimed as

also the effect on other staff members and on public at large. Mr. Patel submitted that ordinarily, under Labour Legislation, once termination is held to be bad, reinstatement can be granted. But if the post held by a person, is of confidence or of managerial cadre. or is a "Gold Collar" post, the court in its discretion may refuse reinstatement, and in lieu of reinstatement, may award compensation to an aggrieved employee.

In support of this submission, Mr. Patel placed reliance on O.P.Bhandari and in particular para-5 thereof, which reads as under :

> There is, under the circumstances, no escape from the conclusion that R. 31(v) of the aforesaid ITDC rules which provides for termination of the services of the employees of the respondent corporation simply by giving 90 days notice or by payment of salary for the notice period in lieu of such notice, deserves to be quashed. As the occasion so demands, we feel constrained to place in focus and highlight an important dimension of the matter. The impugned regulation is extremely wide in its coverage in the sense that it embraces the "blue collar" workmen, the 'white collar' employees, as also the 'gold collar' (managerial cadre) employees of the Undertaking. In so far as the 'blue collar' and 'white collar' employes are concerned, the quashing does not pose any problem. In so far as the 'gold collar' (managerial cadre) employees are concerned, the consequence of quashing of the regulation calls for some reflection. In the private sector, the managerial cadre of employees is altogether excluded from the purview of the Industrial Disputes Act and similar labour legislations. The private sector can cut the dead wood and can get rid of a managerial cadre employee in case he is considered to be wanting in performance or in integrity. Not so the public sector under a rule similar to the impugned rule. Public sector undertakings may under the circumstances be exposed to irreversible damage at the hands of a 'gold collar' employee (belonging to a high managerial cadre) on account of the faulty policy decisions or on account of lack of efficiency or probity of such an employee. The very existence of the undertaking may be endangered beyond recall. Neither the capitalist world nor the

communist world (where an employee has to face a death sentence if a charge of corruption is established) feels handicapped or helpless and countenances such a situation. Not being able to perform as per expectation or failure to rise to the expectations or failure to measure up to the demands of the office is not misconduct. Such an employee can not thus be replaced at all. If this situation were to be tolerated by an undertaking merely because it belongs to the public sector, it would be most unfortunate not only for the undertaking but also for the Nation. The public sector is perched on the commanding heights of the National Economy. Failure of the public sector might well wreck the National Economy. On the other hand the success of the public sector means prosperity for the collective community (and not for an individual Industrial House). The profits it makes in one unit can enable it to run a losing unit, as also to develop or expand the existing units, and start new units, so as to generate more employment and produce more goods and services for the community. The public sector need not therefore be encumbered with unnecessary shackles or made lame. It is wondered whether such a situation can be remedied by enacting a regulation permitting the termination of the employment of the employee belonging to higher managerial cadre, if the undertaking has reason to believe that his performance is unsatisfactory or inadequate or there is a bona fide suspicion about his integrity, these being factors which can not be called into aid to subject him to disciplinary proceeding. If termination is made, under such rule or regulation, perhaps it may not attract the vice of arbitrariness or discrimination condemned by Arts 14 and 16 (1) of the Constitution of India inasmuch as the factor operating in the case of such an employee will place him in a class by himself and the classification would have sufficient nexus with the object sought to be achieved. Of course it is for the concerned authorities to take the sensitive problem after due deliberation. We need say no more ".

Mr. Patel submitted that the decisions on which reliance was placed by the petitioner did not deal with a

post in the nature of "gold collar", but they were cases of "workmen" under the Industrial Disputes Act, 1947. The case of the petitioner cannot, therefore, be compared with a 'workman' and the principles apply and considerations which are relevant in such cases do not apply to a managerial post.

Relying upon an affidavit in reply filed on behalf of the Corporation and correspondence annexed to the said reply, the counsel submitted that many complaints were made by various employees of the Corporation against the petitioner stating that it would not be possible to work with him and the work of the Corporation had suffered. He also submitted that even in 1988, services of the petitioner were terminated, but on assurance being given by the petitioner, the order was revoked immediately. If in such background, relief of reinstatement was not granted by the learned Single Judge, it cannot be said that by refusing such relief, the learned Single Judge has committed an error which requires interference in appeal.

The petitioner, on the other hand, contended that relevant considerations which ought to have been kept in mind, have been ignored by the learned Single Judge and the order is vulnerable . He submitted that there was no earthly reason to refuse to follow general rule of reinstatement and to deprive the petitioner from getting benefit of his success. No reason whatsoever has been recorded by the learned Single Judge for not granting reinstatement. According to the petitioner, the legal position is well settled and has been reiterated by the Apex Court in Delhi Transport Corporation. Regarding O.P.Bhandari, the petitioner submitted that the learned Single Judge has not considered the facts of that case in their proper perspective and allegations levelled against the petitioner. Drawing our attention to para-8 of the judgment, he submitted that the Supreme Court was convinced that grant of reinstatement was uncalled for. The Court observed ;

" Suffice it to say that the relations between the parties appear to have been strained beyond the point of no return. The Trade Union of the employee has lodged a strong protest and even held out a threat of strike in the context of some acts of appellant. Such unrest among the workmen is likely to have a prejudicial effect on the working of the undertaking which would prima

facie be detrimental to the larger National interest not to speak of detriment to the interest of concerned undertaking ".

The Court was not impressed by the submission that the Union was virtually 'company's Union'. The Court even formed an opinion that the apprehension on behalf of the employer was not ill-founded. Taking into account, even the interest of the employee the court opined that it was also in the interest of the employee not to insist for reinstatement, but to go for compensation in lieu of reinstatement. According to the petitioner, therefore, there were sufficient and valid reasons for refusing reinstatement.

Reliance was also placed by the petitioner on M.L.KAMRA VS CHAIRMAN, MANAGING DIRECTOR NEW INDIA ASSURANCE CO. AIR 1992 SC 1072. Analysing the ratio laid down by their Lordships in that case, the petitioner submitted that from that decision alongwith other decisions of the Supreme Court, three principles could be deduced

(i) abolition of post;

(ii) loss of confidence by embezzlement, misappropriation of amount or other serious default, or misconduct;

(iii) dismissal, removal or termination simpliciter.

According to the petitioner, in a case falling in the first category, the court has no option but to grant compensation in lieu of reinstatement. Since no post is available, even if the action is held to be bad, a successful petitioner has to be satisfied by compensation. Regarding second category, the petitioner submitted that even though the action may be held to be bad either because of illegality or of procedural irregularity, the court might be fully justified in refusing reinstatement considering seriousness of allegations levelled against the party. In such cases, even if inquiry is found to be defective and/or order vulnerable, such an employee may not be granted reinstatement. His submission, however, is that his case is neither covered by the first category, nor by the second category. It falls in the third category. Relying on correspondence file and affidavit in rejoinder, he submitted that it was never the case of the

Corporation that something could be said against honesty and integrity of the petitioner. On the contrary , he tried to impress upon us that he had suffered because of his honesty, integrity and sincerity. According to the petitioner, many officers were against him as according to them, the petitioner thought himself to be the only employee 'thoroughly honest' in the Corporation. He, therefore, submitted that when he is straight-forward, sincere and honest, he should not suffer because of his sincerity and honesty and the Corporation cannot be allowed to take undue advantage of its own wrong of terminating his services when the said action is held to be unlawful and illegal. Regarding exercise of discretion by the learned Single Judge, his grievance was that all those facts were not taken into account by the learned Single Judge. Our attention was invited by the petitioner on the observations of the learned Single Judge to the effect that complaints were made against the petitioner "through-out." On the basis of such observations and impression, reinstatement was refused by the learned Single Judge and compensation was awarded. Had the learned Single Judge considered all the facts carefully and the clinching circumstance that the complaints made against the petitioner were upto 1990 and not a single complaint was made thereafter and the impugned action of termination was taken as late as in June, 1994, the learned Single Judge would not have ordered payment of compensation, but would have granted reinstatement.

In our considered opinion, the arguments advanced by the petitioner deserve serious consideration. At the same time, however, Mr. Patel, the learned counsel for the Corporation stated that the petitioner will be reaching age of superannuation on 31st December, 1997. He, therefore, submitted that when the appeal is disposed of by the end of October 1997 and virtually only two months have remained, no purpose would be served by interfering with the order passed by the learned Single Judge by allowing the appeal and by granting reinstatement. Moreover, observations in O.P.Bhandari, are of general nature and they relate to employees of 'gold collar' irrespective of honesty or integrity of an employee.

Considering the rival contentions of the parties and without expressing final opinion one way or the other as to in such cases reinstatement ought to have been granted or not, in the light of the fact that the petitioner would reach age of superannuation on 31st December, 1997, we would not like to interfere with the

order passed by the learned Single Judge and by granting reinstatement to the petitioner. The petitioner, no doubt, submitted that he has been deprived of performing functions and discharging duties from June, 1994 for no fault on his part and he should not suffer because of delay by the court. He further submitted that he is physically fit, mentally alert and morally courageous to take appropriate decision in accordance with law in all situations. He further submitted the Court may order the Corporation to extend his period of service for one year or more.

We are afraid we cannot issue such a direction. Since the age of superannuation is in near future, in our opinion, it would not be proper to disturb the order passed by the learned Single Judge by granting reinstatement. We, therefore, refuse the relief sought by the petitioner in peculiar facts and circumstances of the present case.

RE : QUANTUM OF COMPENSATION :

The last point relates to quantum of compensation ordered by the learned Single Judge. Mr. Patel urged that the basis for payment of salary of twenty-one months adopted by the learned Single Judge was not proper. The relevant date for payment of compensation cannot be the date on which the judgment was delivered by the learned Single Judge but the date on which services of the petitioner came to be terminated. He, therefore, contended that by calculating compensation on the basis of salary payable to the petitioner on the date on which the judgment was delivered an error of law was committed by the learned Single Judge. Substantial amount has been ordered to be paid in excess of the amount to which the petitioner would otherwise be entitled and the order of the learned Single Judge requires to be modified.

We must admit that we are not impressed by the argument. In the facts and circumstances of the case, in our judgment, it is not at all proper and equitable to disturb that part of the judgment. Frankly speaking, we are convinced that the action taken by the Corporation was unwarranted, uncalled for and inequitable. We might have considered the prayer of the petitioner of granting full relief of reinstatement but for a short span of period within which the petitioner is to reach the age of

superannuation. Had there been litle longer period, we would have seriously considered his prayer of reinstatement. It would, therefore, in our opinion, not be proper to interfere with the order passed by the learned Single Judge and the contention raised on behalf of the Corporation must be rejected.

For the foregoing reasons, both the appeals deserve to be dismissed and they are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

The petitioner party-in-person prays to grant a certificate of fitness to approach the Hon'ble Supreme Court under Article 133 of the Constitution of India. In our opinion, the case does not involve a substantial question of law of general importance, which, in our opinion, needs to be decided by the Supreme Court. According to us , the law is well settled. In the light of that well settled legal position and in peculiar facts and circumstances of the case, we have disposed of appeals. Leave is, therefore, refused.

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JOSHI